



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,110	04/14/2004	Kenneth D. Eisenbraun	KDE-23702/03	6162
25006	7590	07/14/2005	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C			SZUMNY, JONATHON A	
PO BOX 7021			ART UNIT	
TROY, MI 48007-7021			PAPER NUMBER	
			3632	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/824,110

Applicant(s)

EISENBRAUN, KENNETH D.

Examiner

Jon A. Szumny

Art Unit

3632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: SEE PAGE 2 (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-18.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
SEE PAGE 2 7/14/05
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

It is first noted that applicant's proposed amendment to claim 10 (specifying that the first and third portion thicknesses are different) would render claim 10 indefinite. With reference to the ratios in the last line of claim 10, if one chose a ratio of, for instance, 1.5:1:1.5, how could the first and third portion thicknesses be different?

Further, regarding the request for reconsideration with respect to the other claims, and more specifically, claim 1, the applicant contends on page 6 of the response that Dossett fails to teach the limitation of a flange within the aperture and Ross does nothing to bolster Dossett in this regard. The Examiner agrees and has always agreed that Dossett considered alone fails to teach such features. However, with respect to the Final Rejection, Ross does in fact teach a flange within an aperture (the aperture is 20 and the flange is in and around 20). Reasons for combining Dossett and Ross can be found in the Final Rejection.

Continuing, with regards to the supposed theft deterrent aspect of the present invention discussed on the bottom of page 6 as well as the discussion on the top and middle of page 7, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Finally, the applicant contends that it is improper to require evidence and arguments in response to an obviousness rejection to be found in the specification in order to be considered, and then cited supposed CAFC precedent bolstering such an assertion. The Examiner will assume the applicant is referring to the rejection of those claims stipulating that the first and third portion thicknesses are different. In an attempt to strengthen the Examiner's position, the Examiner will posit whether specifying in the claims the shape of, for instance, the first tab portion to be diamond, triangular, oval, or star shaped would render those claims otherwise allowable. Based on the applicant's arguments about the first and third portion thicknesses as well as the case law from the CAFC, it would appear these hypothetical claims would be allowable. However, surely anyone (including the Examiner) would realize that absent SOME reasoning or teaching in the specification as to why those shapes produce SOME extraordinary or unexpected result, such shapes amount to nothing more than a design choice or some way of satisfying specific user preferences. Similarly, in the present invention, THE APPLICANT NEVER stated why such thicknesses are so critical.


Jon Zummy
Primary Examiner
AU 3632